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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,780	01/22/2001	Michael J. Sullivan	P-5686U1-D1 SLD 2 0106-2	8351
24492	7590	09/20/2004	EXAMINER GORDON, RAEANN	
THE TOP-FLITE GOLF COMPANY, A WHOLLY OWNED SUBSIDIARY OF CALLAWAY GOLF COMPANY P.O. BOX 901 425 MEADOW STREET CHICOPEE, MA 01021-0901			ART UNIT 3711	PAPER NUMBER

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/766,780

Applicant(s)

SULLIVAN ET AL.

Examiner

Raeann Gorden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 6-28-04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show a multiplayer cover as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. Compare figures 3 and 4 with spec page 40.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamagishi (5,688,595). Regarding claim 1, Yamagishi discloses a golf ball comprising a dual core and a single outer cover. The dual core comprises a center component (12) and a core layer (13) (fig 2). The center component is made from a thermoset material and the core layer is made from a thermoplastic. The outer cover layer has a Shore D hardness from 40 to 60. Regarding claims 2, 4, and 6, the thermoset material for the core component is a polybutadiene and the thermoplastic material for the core layer is an ionomer. Regarding claim 3, the core may comprise of at least two layers (col 2,

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lines 57-60). Regarding claim 7, the center component has a diameter from 0.787 to 1.535 inches and the core component and core layer has a diameter from 1.378 to 1.614 inches. Regarding claims 8 and 9, Yamagishi discloses a variety of inert fillers that may be added to the core layers that are commonly known for increasing/decreasing density (col 5, lines 1-9).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagishi (5,688,595) in view of Maruko '888 or Maruko '009as applied to claims 1-4, 6-13 and 15-18 above and in further view of Wu (5,334,673). Yamagishi in view of Maruko discloses the invention as shown above but does not include polyurethane as an option for the thermoset material (core component). However, Wu teaches a polyurethane golf ball product suitable for the core layer. One skilled in the art would have modified Yamagishi in view of Maruko by including a polyurethane core component to improve the resiliency of the golf ball.

### ***Response to Arguments***

Applicant's arguments filed 6-28-04 have been considered but are not

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persuasive. Applicant argues Yamagishi does not disclose a dual core and a single cover layer. It is clear that Yamagishi discloses a two-layer cover. However, applicant is arguing limitations that are not relevant to the instant application. As stated in the previous office actions, the instant case does not support a golf ball consisting of a dual core and a single cover layer nor is the limitation claimed. Applicant discloses a two-layer cover but has chosen not to claim both layers. However, the second layer is not and cannot be excluded from the claims, hence the transitional word "comprising". Therefor, the presence of a second cover layer in Yamagishi is not relevant since applicant's claims may include additional layers.

The drawing objection is maintained. It is not understood why applicant continues to argue a multi-layer cover is shown in figures 3 and 4. Applicant's specification, lines 23-24, clearly discloses a core (30), a core layer (32), and a multi-layer cover (34). However, the figures do not display a multi-layer cover. Applicant is required to amend the drawing to coincide with the specification.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raeann Gorden whose telephone number is 703-308-8354. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RAEANN GORDEN  
PRIMARY EXAMINER

rg  
September 16, 2004